

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 4101 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE D.H.WAGHELA**

=====

1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

Whether this case involves a substantial question
of law as to the interpretation of the

4 constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
?

=====

B G KHUMAN - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

=====

Appearance :

MR IS SUPEHIA for Petitioner(s) : 1,
Mr M R Mengdey, Asstt.GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

=====

CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA
Date : 22/03/2006

ORAL JUDGMENT

1. This is the fourth legal proceeding by the petitioner even before the departmental enquiry has actually commenced against him. The prayer is to quash the order dated 18.1.2006 appointing an enquiry Officer to conduct and complete within 30 days an oral enquiry

against the petitioner and to stay the enquiry pending the litigation. It is the case of the petitioner that while he was serving as Armed Police Constable in SRP group, on 15.12.2005, a charge sheet was issued to him alleging that he had assaulted, with his rifle in hand, another police constable and injured him. The charge sheet itself conveyed in para 2 that the details of the incident alleged against the petitioner, the list of evidence and list of witnesses were annexed with the charge sheet. It is also categorically stated that the record related to the departmental enquiry was available in the office and that the delinquent was free to examine the same. It was further stated therein that if the delinquent failed to submit his statement of defence within 10 days, it would be presumed that he did not propose to submit his statement of defence and did not intend to examine any witness.

2. The petitioner appears to have immediately rushed to this Court with not one but two petitions, being Special Civil Applications No.24235 and 24256 of 2005, which were withdrawn on 20.12.2005 with a view to making appropriate representation to the higher authority for ventilating his grievances. Immediately thereafter, on 22.12.2005,

the petitioner has written a letter to respondent no.3 stating that, since he had made representation pursuant to the order of the High Court, he did not propose to file any statement of defence till his representation was decided.

3. The respondent no.3 has then made impugned order dated 18.1.2006 to appoint enquiry Officer with a direction to conduct the enquiry on day-to-day basis and complete it within 30 days. Immediately, on 21.1.2006, the petitioner has submitted a long list of documents required by him for preparing his statement of defence and objected to the appointment of the enquiry Officer. He has, by a separate letter, also intimated that he did not intend to submit his statement of defence till the documents were supplied and in absence of the documents, he did not intend to participate in the enquiry. Again, by letter dated 12.2.2006, the petitioner has submitted a long list of documents stating them to be required for proper participation in the enquiry and stating that he had even remained personally present for giving his statement on the same day. The enquiry officer informed the petitioner by letter dated 17.2.2006 that the documents demanded by him could not be supplied as they

were not part of the record of the enquiry and again called him to remain present on 18.2.2006. The petitioner also directly addressed the letter dated 6.2.2006 to the Additional Director General of Police (Armed Unit) requesting postponement of the enquiry and demanding the aforesaid documents. Admittedly, the petitioner had also filed Regular Civil Suit No.21/06 in the Court of learned Principal Civil Judge, Bharuch with respect to the subject matter of the petition and withdrawn it on 27.2.2006 with a view to file fresh proceedings in the High Court.

4. Thus, this is the fourth legal proceeding clearly calculated to derail the departmental enquiry ordered to be completed within a period of one month. Over the years, it has become the standard practice of the delinquent to demand relevant and irrelevant documents at every stage in order to keep alive the grievance that one or the other document which could have been useful to him in defending himself was not supplied and, exaggerating that grievance to the level of violation of principles of natural justice, the disciplinary action is often successfully challenged on such technical grounds to be ultimately exonerated of serious charges

which may be not only revealing serious misconduct but even criminal offence involving moral turpitude. The requirement of observation of principles of natural justice and the purposeful non-codification thereof to ensure flexibility and expediency of the departmental proceedings have, over the years, been distorted into a rigid regimen of such unguided procedure that one or the other grievance can always be made, kept alive and then amplified in a court of law. Therefore, it is high time that the Court takes a holistic view of the matter and discern the genuine cases in which the alleged denial of opportunity has resulted into any prejudice or injustice, and spurn the cases in which one after the other gimmick is deployed to make the departmental enquiry defective, to prolong it as far as possible, to drag it into litigations and ultimately show failure of justice on technical grounds without ever really meeting the charges on merits.

5. The principles of natural justice are not codified with a view to ensure fair-play and opportunity of hearing without making the proceedings too technical and so cumbersome as to defeat the ends of justice.

It is observed as under by the Supreme Court in **K.L.TRIPATHI v. STATE BANK OF INDIA (AIR 1984 SC 273):**

“41. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged in the light of facts and circumstances of each particular case. The basic action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed.”

In **MANAGING DIRECTOR, ECIL, HYDERABAD v. B. KARUNAKAR (AIR 1994 SC 1074)** (in para 6), relying upon the earlier judgment in **A.K. Kraipak v. Union of India (AIR 1970 SC 150)**, it is observed that what particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the tribunal or the body of persons appointed for that purpose. Whenever a complaint is made before a Court that some principle of natural justice has been contravened, the Court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case. It is also observed that the theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions.

It is also held by the Apex Court in STATE BANK OF PATIALA v. S.K. SHARMA (AIR 1996 SC 1669) that, except cases falling under 'no notice', 'no opportunity' and 'no hearing' categories, the complaint of violation of procedural provisions should be examined from the point of view of prejudice, viz; whether such violation has prejudiced the delinquent officer/employee in defending himself properly and effectively. If no prejudice is established to have resulted therefrom it is obvious, no interference is called for.

5.1. In the Gujarat Civil Services (Discipline & Appeal) Rules, 1971, it is provided in Rule 17 as under:

“17. Orders against which an appeal shall not lie :

Notwithstanding anything contained in this Part, no appeal shall lie against:

(i) any order of an interlocutory nature or of the nature of a step-in-aid for the final disposal of a disciplinary proceeding other than an order of suspension;

(ii) any order passed by an enquiry authority in the course of an enquiry under rule 9."

It would appear that while appeals are barred as above during the course of a departmental enquiry, petitions invoking Article 226 of the Constitution for high prerogative writ are resorted to and interference, often uncalled for at the interlocutory stage, is sought with an ulterior motive of derailing or indirectly controlling the departmental proceedings. The Court has to be circumspect in such cases.

6. The facts of the present case clearly epitomise the second class of cases referred to hereinabove where, by way of abuse of the process of court, the petitioner has attempted to derail the departmental proceedings, postpone it as far as possible and sow the seeds of grievance which could be nursed during the enquiry and

fruits whereof could be reaped as and when the enquiry culminates into an order of punishment. Participation in the enquiry by a delinquent officer has developed into an art and a matter of expertise at enormous and incalculable cost to the public administration. It is, therefore, also necessary that Court should be loath to interfere at any or every stage of the departmental enquiry and should ordinarily allow the enquiry to take its own course. Even otherwise, the extraordinary jurisdiction of the High Court under Article 226 of the Constitution could not be exercised to directly or indirectly monitor, guide or interfere with any departmental proceeding which is often aptly called as "domestic enquiry" and a function of "indoor management" of the employer.

7. The arguments of the learned counsel which were admittedly not supported by any provision of law, any precedent or any legal text further proved the points made hereinabove. Despite the simple facts initially stated herein, Mr Supehia, learned counsel for the petitioners, submitted that the previous statements of the witnesses who were going to be examined during the enquiry and the other documents were required by the

petitioner to prepare his defence and unless and until such documents were supplied, enquiry Officer could not be appointed and could not be allowed to proceed. There is no evidence of recording of any "previous statements" of the witnesses and no allegation that such statements, if recorded, were demanded for inspection by the petitioner. Therefore, the submission has to be recorded only for rejection at this stage and as an example of absurdity to which service jurisprudence is taken perhaps by a slow and insidious process.

8. In the facts and for the reasons discussed hereinabove, not only that the petition has no substance and no legal basis but it is clearly ill-advised and by way of abuse of the process of Court. Therefore, it is dismissed *in limine* with no order as to costs in view of the fact that the petitioner is under suspension. The petitioner is directed to always annex a copy of this order in whichever further proceedings he takes up in any legal forum as regards the departmental enquiry which is the subject matter of the present petition.

[D H Waghela, J.]

mSP